



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/161558

PRELIMINARY RECITALS

Pursuant to a petition filed July 28, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on December 04, 2014, at Racine, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the merits of Petitioner's request for Medicaid benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: DDB by file

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. On March 19, 2014, the Petitioner filed an application for disability-based Medicaid benefits, stating that she became disabled from knee, hip and lower back pain. (DDB file; Testimony of Petitioner)
3. The Disability Determination Bureau (DDB) denied her application for Medicaid on June 24, 2014. (Id.)
4. The Petitioner filed a request for reconsideration of the DDB decision on July 28, 2014. (DDB file; Testimony of Petitioner)

5. On October 24, 2014, the DDB again denied the Petitioner's Medicaid application. (Id.)
6. On October 25, 2014, the DDB forwarded the Petitioner's file to the Division of Hearings and Appeals for review. (DDB file)
7. On December 22, 2013, the Petitioner filed an application for Social Security Disability Income (SSDI), stating that she became disabled from arthritis in her shoulder, TMJ, hip and knee pain and asthma. (DDB file; Testimony of Petitioner)
8. On April 28, 2014 and again on June 3, 2014, the Social Security Administration (SSA) denied the Petitioner's application for SSDI. (DDB file; Testimony of Petitioner)
9. The Petitioner's hip pain has since been treated, relatively successfully, but she still is suffering from significant pain in her knee and lower back. (Testimony of Petitioner)

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for disability-based Medicaid. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
 - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

42 CFR 435.541(c)(4)(emphasis added).

Here, Petitioner applied for Medicaid Benefits and for SSDI, stating that she had become disabled by pain in her hip, knee and lower back. The SSA denied the Petitioner's SSDI application within 12 months of her application for Medicaid.

Although the Petitioner testified that her condition has changed since her SSA determination, even for the better, since her hip pain has been addressed, there is no evidence that the SSA has refused to reconsider this change in circumstances. According to the Petitioner, she is working with an attorney on her appeal of the SSA denial.

Based upon the foregoing, it is found that the SSA determination is binding, so there is no jurisdiction to address the merits of Petitioner's Medicaid application.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals does not have jurisdiction to address the merits of Petitioner's request for Medicaid benefits

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of December, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 5, 2014.

Racine County Department of Human Services
Disability Determination Bureau